

IN THE SUPREME COURT FOR THE STATE OF MISSISSIPPI
CASE NO.:2017-M-00648
Related Case No.: 2017-M-00256

JAMES R. BOBO, IN HIS CAPACITY AS AN INVESTIGATOR
FOR THE MISSISSIPPI DEPARTMENT OF CORRECTIONS

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

IN THE MATTER OF:
THE FOURTH JUDICIAL CIRCUIT COURT DISTRICT OF
SUNFLOWER COUNTY, STATE OF MISSISSIPPI

STATE OF MISSISSIPPI

PLAINTIFF

v.

CASE NO.:_____

JAMES R. BOBO

DEFENDANT

MOTION TO CONSOLIDATE

APPELLANT/PETITIONER moves to consolidate 2017-M-00256 *with* 2017-M-00648 and would show unto the Honorable Justice(s) of Said Court:

INTRODUCTION

This motion proceeds on the grounds that the issues involved in the matters before this Court are so related as to make consolidation and advisable. Granting this motion would be in the interest of justice, promotes judicial economy, and would expedite and facilitate those matters before this Court pending consideration.

POSTURE OF PROCEEDINGS

1. James R. Bobo, is a sworn law enforcement officer in this State who was discharging his duties and who would be subsequently hailed into Court based on an affidavit filed by Earnest Lee (Lee) alleging there to have been bodily injures [sic] by Bobo.

2. Shortly thereafter, and after this Court dismissed Bobo's First Application without prejudice and for proceedings in the trial court the matter went forward in the Circuit Court of Sunflower County, Hon. W. Ashley Hines presiding.

3. The Circuit Court considered the pre-filed written and oral arguments as to Petitioner's Motion taking same under advisement. [See, TR ¶8:8-10]. Eight (8) witnesses testified, including Earnest Lee. [See, TR at ¶ 2:2-3].

4. Lee's inherently conflicted testimony is irreconcilable with his underlying affidavit. According to Lee, his bodily injury was physical contact and that he concludes bare physical contact to be bodily injury. [See, TR at ¶9: 18-22]. According to Lee, everybody rate force differently. [See, TR at ¶24: 18-22].

5. Petitioner caused to be filed a second application in the original cause no. on or about May 8, 2017.¹ The trial court's order(s) which are also pending appellate review in this matter remain subject to the Court's decision for a ruling seeking an extraordinary remedy.

6. Consolidation of these matters is sought as there is a pending *Second Application For Extraordinary Relief* in Cause No. 2017-M-00256 and there are also two (2) Interlocutory Orders in the instant proceeding that arise from the Circuit Court of Sunflower County and which are presently before this Court in the instant proceeding, to wit:

- a. *Order Denying Relief Upon Bobo's First Amended Notice of Special Appearance & Expedited Motion*, and;
- b. *Order Finding Probable Cause & Directing Issuance of Arrest Warrant*.

¹ Counsel submits there was some question on whether to file a second Petition in the original action, and did so after conferring with the Supreme Court Clerk's Office.

7. By granting consolidation a thorough interlocutory record provides this Court with the relevant testimony presented and better insight into what transpired in the trial court. *See*, M.R.A.P. 10(f).

8. Consolidation would further be appropriate and beneficial for consideration by this Honorable Court so as to convey the proceedings below with the fairness, accuracy, and completeness necessary to provide an entire account on an expedited basis for the issues presented and upon which this Court may consider those issues.

9. That, there exists other exhibits previously presented to this Court, and for which a decision remains pending in the related cause. *See, James R. Bobo v. State of Mississippi*, 2017-M-00256.

LEGAL STANDARD

10. Appellate rules warrant this motion requesting a special order consolidating the matters before the Court. *See*, M.R.A.P. 23(a). A special order is appropriate when it would be in the interest of facilitating a decision and bringing matters to the Court for its consideration. *See*, M.R.A.P. 2(c) & 5(e).

CONCLUSION

For these reasons, Petitioner/Appellant moves this Court to consolidate the proceedings in cause numbers 2017-M-00256 & 2017-M-00648 by suspending the Rules of Appellate Procedure and entering an appropriate order thereon.

WHEREFORE, premises considered, Appellant moves for the following relief:

- A. This Motion be received filed and docketed by the Honorable Clerk of the Court;
- B. This Honorable Court enter an Order consolidating 2017-M-00256 & 2017-M-00648
- C. Any other relief the Court finds to be proper and just under the circumstances.

RESPECTFULLY SUBMITTED, THIS, 18th day of MAY, 2017

JAMES R. BOBO

By: /s/ Erich G. Jerscheid

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CERTIFICATE OF SERVICE

I, Erich G. Jerscheid, certify that a copy of the above and foregoing was filed, which caused notice to be sent to the following:

Jason L. Davis - jdavi@ago.state.ms.us
Office of the Attorney General - State of Mississippi

AND TO THE FOLLOWING on the **18th** day of MAY, 2017 in the following manner provided below:

Gary Austin, County Prosecutor
Sunflower County, Mississippi
Via Email: austingl@bellsouth.net

Hon. Douglas Wade as legal counsel for:
Earnest Lee, Superintendent
Via email: doug@wadelawofficepllc.com

Hon. W. Ashley Hines
4th Judicial Circuit District
Post Office Box 1315
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Via First Class Mail, Postage Prepaid

RESPECTFULLY SUBMITTED,
Erich G. Jerscheid, PLLC

By: /s/ Erich G. Jerscheid
Erich G. Jerscheid, (MSB# 104982)